IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5624 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJ. STATE FINANCIAL CORPN

Versus

COLLECTOR

Appearance:

MR BJ JADEJA for Petitioner

Mr. L.R. Pujari AGP for the Respondent Authorities. 6,

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/10/2000

ORAL JUDGEMENT

Heard learned advocate Mr. Jadeja for the petitioner and Mr. Pujari, learned AGP for respondent No.2. None present for respondents no.2 to 7 though served with the notice of rule.

This petition was admitted by this court on 5th December, 1991.

The petitioner corporation duly constituted under the State Financial Corporations Act, 1951 has been established with a view to provide medium and long term credit to small scale industries. Accordingly, the partners of M/s. Tadkeshwar Tiles Works at Tadkeshwar in Mandvi Taluka had obtained a loan for their unit and had executed Hypothecation Deed dated 17.6.72 regarding machineries of the unit. That the said loan was to be repaid back till 20.6.80. However, the partners failed to repay the same. Accordingly, the Managing Director of the Corporation issued a certificate and directed to recover an amount of Rs.4,36,770.32 ps. under the Gujarat Public Moneys Recovery of Dues Act, 1979. In pursuance thereto, the Mamlatdar, Recovery Cell (GSFC) Nanpura, Surat issued notice to the unit calling upon the unit to show cause why the dues should not be recovered as an arrears of land revenue. Thereafter, notices were also issued under sec.152 and 200 of the Bombay Land Revenue Code to pay up the dues and as the unit failed to pay the dues, the machinery was attached on 3.7.82. Of course, possession was given to the partners of the unit to carry on their business. But even then, they failed to make any payment. Thereupon, the Mamlatdar passed order dated 15.9.83 to attach the personal property of the partners. Shri Shantilal Ambalal Patel and Shakuntalaben Shantilal Patel partners of the unit filed an appeal before the Collector, Valsad against that order dated 15.9.83 though of course respondents no.2 to 7 who are the heirs any legal representatives of Haji Ahmad Asmalji Bhikhu one of the partners had not challenged that order. The Collector, Valsad by order dated 25.6.1984 set aside the order dated 15.9.83 passed by the Mamlatdar and directed the Dy. COllector (Recovery) to hold fresh inquiry and proceed further in recovery proceedings. Thereupon, the Dy.Collector (Recovery) directed the Mamlatdar Recovery Cell (GSFC) Surat to hold inquiry. The Mamlatdar issued notices to the heirs any legal representatives of the deceased partner Haji Ahmad Asmalji Bhikhu on 6.6.86 calling upon them to show cause why the property left by the decd. partners could not be attached. Thereafter, after hearing the learned advocate for the said respondent, the Mamlatdar passed order that it was not possible to recover complete dues from the sale of hypothecated machinery and in the meanwhile, as it was apprehended that the respondents were likely to dispose of the properties left by the deceased, the Mamlatdar passed order to recover the dues by attachment of the immovable property left by the deceased by his

order dated 10th September, 1986 which order was challenged by the said respondents before the COllector which came to be allowed by the Collector by order dated 8.6.87 and the matter was remanded to the Mamlatdar for fresh hearing. Said order dated 8.6.87 passed by the Collector was taken by the petitioner into revision before the Addl. Chief Secretary (Appeals) Revenue Department. The Addl. Chief Secretary while dismissing the said revision application preferred by the petitioner, also set aside the order dated8.6.87 passed by the Collector as well as the order dated 10.9.86 passed by the Mamlatdar as contrary to law. The petitioner corporation has approached this court against the said order dated 4.2.91 passed by the Addl. Chief Secretary (Appeals).

Learned advocate Mr. Jadeja has submitted that the Addl. Chief Secretary(Appeals) has committed gross error in coming to the conclusion that the heirs and legal representatives of the deceased partners are not considered to be the partners in the partnership firm. Heirs and legal representatives of the deceased partners are not taken on in partnership firm and, therefore, liability and responsibility of the partners being joint and several is limited to the partners and is not extended to the heirs and legal representatives of the partners. If any debt is required to be recovered from the partners, same cannot be recovered from the legal heirs of the partners who expired. He has further submitted that such observations and conclusions drawn by the Addl. Chief Secretary(Appeals) are apparently erroneous and not in accordance with law. He has submitted that the Mamlatdar Recovery Cell has not made any attempt to recover the dues of the partnership firm from the properties of the heirs but he has directed attachment of the estate left by the decd. partner.

Considering the submissions of Mr. Jadeja and the order passed by the Mamlatdar dated 10th September, 1986 as well as the order of the Collector dated 8.6.1987, it is clear that the Addl. Chief Secretary(Appeals) has erred in appreciating the facts. Estates left by the deceased are answerable for recovering the dues of the partnership firm and the Addl. Chief Secretary(Appeals) was in error in not appreciating this aspect of the matter. This is an error which is apparent on the face of the record and, therefore, this petition is allowed. Impugned order passed by the Additional Chief Secretary (Appeals) is hereby quashed and set aside. Order of the Collector dated 8.6.1987 is also quashed and set aside and order passed by the

Mamlatdar Recovery Cell dated 10.9.1986 is restored and confirmed. Rule is made absolute accordingly with no order as to costs.

5.10.2000. (H.K. Rathod,J.)

Vyas